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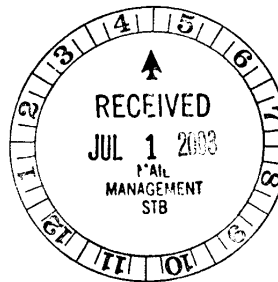
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July 1, 2003

VIA HAND DELIVERY

Mr. Vernon Williams, Secretary  
Office of the Secretary  
Surface Transportation Board  
Room 700  
1925 K Street, N.W.  
Washington, D.C. 20423-0001



RE: Finance Docket 34192 - 208248  
Hi Tech Trans, LLC -- Petition for Declaratory Order --  
Hudson County, NJ

Finance Docket No. 34192 (Sub-No. 1) - 208249  
Hi Tech Trans LLC -- Petition for Declaratory Order --  
Rail Transload Facility at Oak Island Yard, Newark, NJ

Dear Secretary Williams:

On June 30, 2003, we filed a letter to the Board responding to a letter dated June 26, 2003 from counsel for Hi Tech Trans, LLC ("Hi Tech") in the above referenced proceedings. The purpose of this letter is to apprise the Board of a related development that occurred subsequent to our June 30 letter.

In the June 30 letter, we noted that Hi Tech was served with an Administrative Order issued by the New Jersey Department of Environmental Protection ("NJDEP") on May 28, 2003, directing it to cease and desist violating specified state environmental health and safety statutes effective June 17, 2003. We also noted that Hi Tech sought, on June 18, 2003, a stay of the effectiveness of that decision and an administrative hearing of the allegations made against it. On June 30, 2003, NJDEP Commissioner Bradley M. Campbell issued a letter and decision issuing emergency relief, which had the effect of directing its Office of Solid and Hazardous Waste Compliance and Enforcement "from seeking judicial enforcement of the administrative order for 60 days," subject to Hi Tech's



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GALLAND, KHARASCH, GREENBERG, FELLMAN & SWIRSKY, P.C.

Vernon Williams, Secretary

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compliance with certain specified conditions. In addition, Commissioner Campbell indicated that he would expedite Hi Tech's request for administrative hearing and establish a procedure by which the administrative process would conclude within the 60-day period established in his June 30, 2003 order.

We have attached a copy of Commissioner Campbell's letter and the decision for the Board's information.

In accordance with the Board's rules, we have enclosed an original and ten copies of this letter. We have also enclosed one additional copy and request that it be date-stamped and returned to us so that our records may properly reflect the filing.

If you have any questions concerning this, please do not hesitate to contact me.

Very truly yours,



Edward D. Greenberg

Encl.

cc:

James A. Fletcher, Esq. (via Facsimile)  
Thomas J. Litwiler, Esq. (via Facsimile)  
Benjamin Clarke, Esq. (via Facsimile)  
James H. Martin, Deputy Attorney General (via Facsimile)  
All parties of record (via U.S. Mail)



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James E. McGreevey  
Governor

State of New Jersey  
Department of Environmental Protection

Bradley M. Campbell  
Commissioner

(609) 292-2885

June 30, 2003

VIA FACSIMILE

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**Counsel:**

This is the matter of Hi Tech Trans, LLC and David Stoller, Administrative Order No. E.A. PEA-030001-U131, issued May 27, 2003. This letter decision addresses an application for emergency relief filed by Hi Tech Trans, LLC and David Stoller (collectively "Hi Tech") whereby the Administrative Order would be stayed pending resolution of the administrative case.

The procedural history of the matter is as follows. On May 28, 2003, the Office of Solid and Hazardous Waste Compliance and Enforcement in the Department of Environmental Protection (hereinafter the "Office") issued an Administrative Order citing High Tech for operating an unpermitted solid waste facility and engaging in the commercial disposal of solid waste without having obtained a Certificate of Public Convenience and Necessity. The Administrative Order directed Hi Tech to cease and desist operation of the illegal solid waste facility and operation of the uncertificated public utility within twenty calendar days of receipt of the Administrative Order. On June 17, 2003, High Tech requested an administrative hearing and sought a stay from me pending resolution of the

administrative case. On June 24, 2003 the Hudson County Improvement Authority and the Essex County Utilities Authority (hereinafter "Authorities") moved to intervene. On June 25, 2003 the Office filed its papers in response to the stay request.

On June 26, 2003 at 3 p.m., I faxed a letter order to all counsel granting the Authorities' motion for intervention and directing the Authorities and Hi Tech to file any further papers on the motion for a stay by 3 p.m. on Friday, June 27, 2003. The letter order further indicated that I intended to immediately review and rule on the papers.

Both the Authorities and Hi Tech requested extensions of time to provide their submissions. In addition, they objected that they had not been served with each other's papers. As a result, a telephone conference call was held with all counsel. Counsel was directed to immediately complete full service and were given an extension to 9 a.m., Monday, June 30, 2003 to file their papers relating to the stay request.

On June 27, the Authorities intervened in opposition to the stay request. On June 30, 2003 Hi Tech submitted reply papers giving its general agreement on most of the stay conditions proposed by the Office.

The Department must rule at this time. I note that while Hi Tech has requested additional time to brief the stay, it has not offered to withdraw its emergent motion to the federal courts seeking intervention if the Department fails to timely act on this stay request. I further note that the Department, under the scheduling order of the federal court, must file papers later today indicating to the federal court what action I have taken regarding the administrative stay request. In addition, apart from any court proceedings, this Department needs to take timely action on this emergent application. Moreover, the twenty-day grace period built into the Administrative Order of May 27<sup>th</sup> (during which time the Office indicated it would forebear from taking enforcement action) has expired and the Department must indicate its intention with respect to enforcement.

Therefore, I am issuing an order on emergency relief today and will entertain applications for modifications to, or relief from, that order on a schedule that takes into account the needs of all parties. There is no other practical way to issue a timely ruling and accommodate the requests for time of all the parties.

With regard to emergency relief, it must be noted that the charge against Hi Tech is serious— operating without the necessary approvals from the Department. Illegal facilities have a significant effect not only on customers and nearby residents but and on other participants in the solid waste industry. Illegal facilities interfere with the statutory mandate of the Department and the counties to plan for and police solid waste operations within their jurisdictions. Because these facilities operate outside of the system, in important ways their existence jeopardizes the very integrity of the regulatory system. To grant emergency relief staying the Administrative Order here would risk sending a message to the public and industry that the Department does not take violations of this kind seriously or is not fully committed to enforcement follow through. Nothing could be further from the truth.

Nevertheless, the Department is mindful that there has not yet been a hearing on Hi Tech's administrative claim. Due process counsels that Hi Tech should have this opportunity before the Office enforces its cease and desist order.

Accordingly, while I am not staying the Administrative Order, I am hereby granting emergency relief whereby the Office of Solid and Hazardous Waste Compliance and Enforcement will forbear from seeking judicial enforcement of the Administrative Order for 60 days, on the conditions set forth in the attached order. I find the conditions imposed therein reasonable and appropriate. Operational requirements of this type are commonly included in solid waste facility permits of the type Hi Tech would have sought if it had complied with statute and regulation. It is crucial that the granting of emergency relief herein must not place Hi Tech in a position more advantageous than that of lawfully permitted facilities nor make them exempt from necessary environmental, health or safety requirements.

Finally, I note that there are certain other issues that have been raised by the parties that, because of the time constraints noted above, are not dealt with in this decision. Counsel is expressly invited to brief those issues when they avail themselves of the opportunity to seek relief from the Order. I note that these issues include, but are not limited to: intervention by the Authorities; confidentiality of Hi Tech's customer lists; scrap metal handling; and paving portions of the site.

By action under separate cover, I will expedite the administrative hearing request so that the administrative process will conclude within the 60-day period established in the order issued today.

  
Bradley M. Campbell  
Commissioner



James E. McGreevey  
Governor

State of New Jersey  
Department of Environmental Protection

Bradley M. Campbell  
Commissioner

**IN THE MATTER OF:**

**HI TECH TRANS, LLC and  
DAVID STOLLER,  
Individually, and in His Capacity as  
Capacity as Chairman and Chief  
Executive Officer of  
HI TECH TRANS, LLC.**

**ADMINISTRATIVE ORDER  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

**EMERGENCY RELIEF**

**EA ID # PEA030001-U131**

The Department issued an administrative cease and desist Order on May 27, 2003 in the above-captioned matter ("the cease and desist Order"), which was served upon respondents Hi Tech Trans, LLC ("Hi Tech") and David Stoller (jointly referred to herein as "the respondents"), on May 28, 2003. On June 18, 2003 the respondents requested an administrative hearing and moved for an interim stay of that Order. On June 23, 2003, the respondents submitted an amended motion for interim stay. On June 25, the Department's Office of Solid Waste Compliance and Enforcement ("Office") submitted a letter setting forth its consent to the issuance of an interim stay of enforcement of the Order, but conditioned upon the imposition of certain conditions designed to protect the public health, safety and the environment during the interim stay period. On June 27, the Hudson County Improvement Authority and Essex County Utilities Authority ("Authorities") intervened in opposition to the stay request. On June 30, 2003 Hi Tech submitted reply papers giving its general agreement on most of the stay conditions proposed by the Office.

In light of the express consent of the Office to forbear from enforcing the Order, I need not reach the issue of whether High Tech has set forth the necessary elements for an equitable stay. Therefore, after review of the papers, and for good cause shown, the Department has decided to grant emergency relief, but with conditions.

IT IS on this 30<sup>th</sup> day of June, 2003;

ORDERED that the Office of Solid Waste Compliance and Enforcement shall forbear from seeking judicial enforcement of the cease and desist order for a period of 60 days, or until further order of the Department vacating or amending this order for emergency relief, to enable High Tech to obtain appropriate administrative due process on an expedited basis pursuant to the Administrative Procedure Act, during which time High Tech shall comply with the following conditions:

1. Within each twenty-four (24) hour period High Tech shall clean each area where waste has been deposited or stored;
2. No waste shall be stored overnight;
3. The Hi Tech facility property surrounding the actual waste management area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residuals and effluents. Methods (such as fencing) of effectively controlling windblown papers and other lightweight materials shall be implemented;
4. Methods of effectively controlling dust shall be implemented in order to prevent migration offsite;
5. The operation shall not result in the migration of odors outside the confines of the Hi Tech facility or the emission of air contaminants in violation of N.J.A.C. 7:27-5.2(a);

6. An adequate water supply and adequate fire-fighting equipment shall be maintained to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the Hi Tech facility at all times;
7. High Tech shall effectively control insects, other arthropods and rodents at the Hi Tech facility by means of a program in compliance with N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;
8. The Hi Tech Trans facility shall, within 30 days of the date of this Order, operate certified scales for the reporting requirements of N.J.A.C. 7:26-2.13 for waste transported by trucks;
9. The queuing and staging of solid waste vehicles on any public roadway is prohibited;
10. The queuing and staging of solid waste vehicles shall be conducted so as to prevent traffic backups and related traffic hazards on access roads servicing the Hi Tech facility;
11. Facilities and all appurtenances, including vehicles while onsite, shall be positioned and buffered in such a manner that sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control Regulations, N.J.A.C. 7:29;
12. High Tech shall not accept or in any manner handle hazardous waste as defined at N.J.S.A. 13:1E-38 or regulated medical waste, as defined at N.J.S.A. 13:1E-48.3. If the Hi Tech facility inadvertently accepts an unauthorized waste type, respondents shall



immediately report the event to the Department's Hotline at 1-877-WARNDEP, and place the waste in a secure area under the Hi Tech facility's control, located a safe distance from active waste areas, until the High Tech receives instruction from the Department as to the proper disposal of the waste.

13. Solid waste shall not remain at the Hi Tech facility for more than 24 hours.

14. Effective security procedures shall be implemented to control entry and exit at all times.

15. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or any other portion of the respondents' facility, at any time. This right to enter and inspect includes, but is not limited to:

- (1) Observing and sampling any materials on site;
- (2) Photographing any portion of the Hi Tech facility, solid waste vehicles, containers, and container contents;
- (3) Investigating an actual or suspected source of pollution of the environment;
- (4) Ascertaining compliance or non-compliance with the statutes and regulations of the Department; and
- (5) Reviewing and copying all records that are required to be maintained by federal or state law, which shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

16. Any release or discharge of any solid waste at the Hi Tech facility shall be immediately reported by High Tech or their designee to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP. The report shall specify the type of substance discharged and the estimated quantity, the nature of the discharge, the location of the

discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification.

17. High Tech shall designate an on-site emergency coordinator who will be available during all hours of operation for the purpose of handling emergency situations such as, but not limited to, spills, discharges or releases of solid wastes at the Hi Tech facility.

18. Only solid waste vehicles properly registered, pursuant to N.J.A.C. 7:26-3, with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted for loading and unloading of any solid waste at the Hi Tech facility. Hi-Tech shall comply with all requirements of applicable District Solid Waste Management Plans unless an order to the contrary is issued by the Department or a court of competent jurisdiction.

19. The Hi Tech facility shall not receive, store, handle, process or transfer waste types other than ID # 13 and ID # 13C, as defined pursuant to N.J.A.C. 7:26-2.13(g).

20. High Tech shall provide a means of removing mud, solid waste or other debris from the tires of all vehicles. Vehicle tires shall be cleaned prior to the vehicle's departure from the Hi Tech facility's boundaries.

21. The Hi Tech facility shall, within no later than 30 days of the date of this Order, install and properly maintain a system that collects, stores, and properly disposes of wastewater generated during normal operations, including wash-out and cleaning of equipment, trucks and floors, in compliance with the applicable rules regarding wastewater and storm water management at N.J.A.C. 7:14A;

22. On all onsite roadways and storage areas subject to vehicle loading and unloading, Hi Tech shall, no later than 30 days from the date of this Order, undertake reasonable measures to reduce dust and prevent pollutants from seeping into the soils. The measures taken need not be by concrete or asphalt paving, unless subsequently ordered to the contrary.

23. Failure to operate in compliance with the requirements of this agreement shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5, and shall be cause for reconsideration and possible vacation or amendment of this Order.

24. High Tech shall comply with the following record keeping and reporting requirements:

- i. The Hi Tech facility shall maintain a daily record of wastes received. The record shall include the information specified in N.J.A.C. 7:26-2.13(a);
- ii. The daily record shall be maintained, shall be kept, and shall be available for inspection in accordance with N.J.A.C. 7:26-2.13(b);
- iii. The Hi Tech facility shall verify, retain, and make available for inspection a waste origin/disposal (O and D) form for each load of solid waste received in accordance with N.J.A.C. 7:26-2.13(c).
- iv. High Tech shall submit monthly summaries of wastes received to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning, on forms provided by the Department (or duplicates of same), no later than 20 days after the last day of each month. The monthly summaries shall include the information specified at N.J.A.C. 7:26-2.13(e).


High Tech is ordered to file with the Department an affidavit within 10 days of the date of this Order attesting to their compliance with all of the conditions set forth above except those in paragraphs 8, 21, 22, 23 and 24. High Tech shall be required to file with the Department an affidavit within 35 days of the date of this Order attesting to compliance with all of the conditions set forth in paragraphs 8, 21, and 22.

By issuing this order for emergency relief, the Department is not in any way recognizing Hi Tech as a facility lawfully authorized to handle, receive, process, collect or dispose of, solid waste. Specifically, nothing in this Order shall preclude the Department or any of its lawful agents, including but not limited to those under the County Environmental Health Act, from prosecuting any solid waste hauler or transporter for failure to dispose of solid waste at a lawfully authorized solid waste facility.

Nothing within this Order shall be interpreted as implying that the interim conditions set forth herein are an effective substitute for, or are in any way as protective of the public health, safety and the environment as, the lawful permitting and licensure processes under the Solid Waste Management Act and the Solid Waste Utility Control Act. Nor shall this Order in any way preclude the Department from imposing more stringent standards upon respondents as the public health, safety and welfare require.

Dated:

June 30 2003

  
\_\_\_\_\_  
Bradley M. Campbell  
Commissioner